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IN THE

Supreme Court of the United States

October Term, 1968

No. [redacted] 24

WILLIAM P. ROGERS, Secretary of State,
Appellant,

v.

ALDO MARIO BELLEI,
Appellee.

APPELLEE'S MOTION TO AFFIRM

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No. 1463

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Appellee.

APPELLEE'S MOTION TO AFFIRM

The appellee, Aldo Mario Bellei, moves under Rule 16 of the Revised Rules of the Court that the judgment of the federal three-judge court below be affirmed on the ground that it is manifest that the question on which the decision of this cause depends is governed by the Court's decisions in *Schneider* v. *Rusk,* 377 U.S. 163 (1964), and *Afroyim* v. *Rusk,* 387 U.S. 253 (1967).

Question Presented

Can the Congress, consistent with the due process clause of the Fifth Amendment, withdraw United States citizenship, acquired at birth, absent a voluntary renunciation?

Statement of the Case

The appellee, Aldo Mario Bellei, like his mother, has always valued his United States citizenship. He prizes it now. He has always wanted to have his United States citizenship. He wishes to have it now.

On four of the five times that he came to this country he travelled on a United States passport. The fifth time he wanted to do so, but our State Department would not permit it. That was the time he came here with his bride on their honeymoon to visit his grandparents on his mother's side.

Moreover, the appellee has never done anything to jeopardize his United States citizenship. He has at no time served in the military forces of Italy or any foreign country. He has never voted in any election in Italy or in any other foreign country. At the time that our State Department advised him that he no longer held American nationality, he was working for an organization engaged in the NATO defense program.

The federal three-judge district court below succinctly stated the facts in one paragraph of its opinion:

> Plaintiff, from birth, has been treated as an American citizen by the United States Government. He has been welcomed to this country without visas or other immigration papers required of foreigners. He has availed himself of his unlimited access to come to this country on several occasions and to visit with his mother's family. Plaintiff has also traveled at all times under American diplomatic protection. On his

first two visits Bellei traveled on his mother's American passport. On the last two occasions when plaintiff visited the United States, he journeyed under his own American passport, which had been issued in 1952 and periodically renewed until 1964. He was subject to the military service laws and he registered for the draft in 1960.[3]

3. His scheduled induction in 1963 was deferred because of his employment with a NATO defense program.

396 F. Supp. at 1248.

The appellee was born at Ancona, Italy, on December 22, 1939. His mother, Theresa Lola Bellei, nee Cesaretti, was born in Philadelphia, Pennsylvania, on March 14, 1915 and resided in the United States until March 23, 1939. When she was 24 years old, she went to Italy to live with her husband, whom she had married in Philadelphia, Pennsylvania, on March 14, 1939. At the time of appellee's birth his mother was, and always has been a citizen of the United States.

The appellee was physically present in the United States from April 27, 1948 to July 31, 1948, from July 10, 1951 to October 5, 1951, from June of 1955 until October of 1955, from December 18, 1962 to February 13, 1963, and from May 26, 1965 to June 13, 1965. On the first two such occasions the appellee came to the United States on his mother's passport. She was in possession of a United States passport, and was admitted to the United States with her children as citizens of this country. On the next two such occasions, he came to the United States on his own United States passport, and was admitted to the United States as a citizen of this country.

For nearly a dozen years, from 1952 to 1964, the appellee as a United States citizen had his own United States passport. He was first issued his own United States passport on June 27, 1952. Thereafter his passport was periodically renewed.

On March 28, 1960 the appellee registered under the Selective Service laws of the United States with the American Consul in Rome, Italy. He was asked to report for a physical examination and passed such examination by the U.S. Army at Leghorn, Italy. On December 11, 1963 he was asked to report for induction at Washington, D.C., but his induction was deferred because he was employed on a NATO defense program. After February 14, 1964 he received a letter from the United States Selective Service explaining that due to loss of his United States citizenship he had no further obligations for military service on behalf of the United States.

The question on which the decision of the cause depends is governed by the court's holdings in *Schneider* v. *Rusk*, 377 U.S. 163 (1964), and *Afroyim* v. *Rusk*, 387 U.S. 253 (1967).

With the exception of *Perez* v. *Brownell*, 356 U.S. 44 (1958), which the Court overruled in *Afroyim* v. *Rusk*, 387 U.S. 253 (1967), the Court has consistently invalidated statutory provisions for involuntary expatriation. *Afroyim* v. *Rusk*, 387 U.S. 253 (1967); *Schneider* v. *Rusk*, 377 U.S. 163 (1964); *cf. Perkins* v. *Elg*, 307 U.S. 325 (1939). As the court below stated:

> Plaintiff contends that section 301(b) operates to strip a citizen of his citizenship and rests his case

> primarily on the pillar of due process which has become a bulwark for the protection of citizenship in recent Supreme Court decisions. See Afroyim v. Rusk, 387 U.S. 253, 87 S.Ct. 1660, 18 L.Ed. 2d 757 (1967); Schneider v. Rusk, 377 U.S. 163, 84 S.Ct. 1187, 12 L.Ed. 2d 218 (1964). While the facts of both cases are distinguishable, we think the *Afroyim* and *Schneider* opinions do stand for the proposition that in the absence of fraud Congress may not withdraw a citizenship, whether acquired at birth or by subsequent grant, that is not voluntarily renounced. * * *

296 F.Supp. at 1249.

The appellant would like to distinguish between United States citizenship based on a Congressional grant and that based on the Fourteenth Amendment (Jurisdictional Statement, pp. 8-9). But in *Schneider* v. *Rusk*, 377 U.S. 163 (1963), Angelika Schneider received her derivative United States citizenship through her mother by statute. She was just as much a statutory citizen as Aldo Mario Bellei is.

Conclusion

The Court should affirm the judgment of the federal three-judge district court below on the basis of *Schneider* v. *Rusk*, 377 U.S. 163 (1964), and *Afroyim* v. *Rusk*, 387 U.S. 253 (1967).

Respectfully submitted,

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